

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DERRICK C. BOSLEY, SR.

Plaintiff,

vs

DEPUY SYNTHES SALES, INC. d/b/a/  
DEPUY SYNTHES JOINT  
RECONSTRUCTION; DEPUY  
ORTHOPAEDICS, INC.; DEPUY  
INTERNATIONAL LIMITED; JOHNSON  
& JOHNSON; JOHNSON & JOHNSON  
SERVICES, INC.; JOHNSON & JOHNSON  
INTERNATIONAL; MEDICAL DEVICE  
BUSINESS SERVICES, INC.; DEPUY,  
INC.; DEPUY SYNTHES PRODUCTS,  
INC.; DEPUY SYNTHES, INC.; DEPUY  
IRELAND UNLIMITED COMPANY;  
DEPUY SYNTHES JOHNSON &  
JOHNSON IRELAND LTD.; AND  
RELATED ENTITIES A, B AND C,

Defendants.

) Case No. C21-1683-MLP

) PRETRIAL ORDER

**JURISDICTION**

Jurisdiction is vested in this Court by virtue of and pursuant to 28 U.S.C. §1332 in that the amount in controversy alleged exceeds \$75,000.00, exclusive of interest and costs, and this is an action by an individual Plaintiff against Defendants<sup>1</sup> who are citizens of different states.

**CLAIMS AND DEFENSES**

**The Plaintiff will pursue the following claims at trial:**

1. First Cause of Action - Washington Product Liability Act, Unsafe Design, Strict Liability.
2. Fifth Cause of Action - Washington Product Liability Act, Failure to Warn.

**The Defendants intend to assert certain affirmative defenses that they will pursue at trial and in response to Plaintiff's claims, including, but not limited to, the following:**

1. Plaintiff's Complaint fails, in whole or part, to state a claim upon which relief may be granted.
2. Plaintiff fails to, and cannot, present evidence to support his claims against the Defendants. NOTE: Plaintiff objects to this asserted defense.
3. Plaintiff fails to meet his burden to show that Defendants are liable for his alleged injuries. NOTE: Plaintiff objects to this asserted defense.

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<sup>1</sup> In submitting this Joint Pretrial Order, Defendants do not waive and expressly reserve their objections to the entirety of Plaintiff's pretrial disclosures, which were due (per LCR 16(h)) on August 10, 2023, but which were not served on Defendants until August 24, 2023.

1           4.       Plaintiff fails to provide reliable expert testimony to support his claim that  
2 Defendants' alleged conduct caused his injuries. *Bruns v. PACCAR, Inc.*, 890 P. 2d 469, 477  
3 (Wash. Ct. App. 1995). NOTE: Plaintiff objects to this asserted defense.  
4

5           5.       Plaintiff knowingly and voluntarily assumed any and all risks associated with  
6 the use of the ATTUNE® product at issue in this case and was subjectively aware of facts  
7 which cover any and all risks. Such assumption of the risks bars in whole or in part the  
8 damages Plaintiff seeks to recover in this case.  
9

10          6.       Plaintiff's alleged injuries attributable to the use of the ATTUNE® product in  
11 this case, if any, were not legally caused by the ATTUNE® product, but instead were legally  
12 caused by intervening and superseding causes or circumstances.  
13

14          7.       Plaintiff's alleged damages, if any, are barred in whole or in part by  
15 Plaintiff's failure to mitigate such damages.  
16

17          8.       Plaintiff's causes of action are barred by the applicable statutes of limitation,  
18 statutes of repose, doctrines of laches and/or estoppel.  
19

20          9.       Plaintiff's claims are barred in whole or in part because the ATTUNE®  
21 product was, at all relevant, times manufactured and sold consistent with available  
22 technology, scientific knowledge, and the state of the art, and in compliance with all federal,  
23 state, and local laws and regulations, and was accompanied by product information and  
24 warnings that were reasonable, full and adequate and in accordance with FDA regulating  
25 requirements and the state of medical and scientific knowledge then in existence.  
26 Compliance with such codes, statutes, rules, regulations and standards demonstrates that due

1 care was exercised with respect to the design, manufacture, testing, marketing and sale of  
2 the ATTUNE® product, and that Defendants are entitled to a presumption that the  
3 ATTUNE® product is neither defective, nor unreasonably dangerous. Plaintiff's claims and  
4 any recovery are accordingly barred.

5  
6 10. Plaintiff's claims should be diminished in whole or in part by the amount  
7 paid to Plaintiff by any party or non-party with whom Plaintiff has settled or may settle.

8  
9 11. Plaintiff's damages, if any, are barred or limited by the payments received  
10 from collateral sources.

11 12. Plaintiff's causes of action are barred by the learned intermediary doctrine.

12  
13 13. Plaintiff's claims are barred by the doctrines of informed consent, release and  
14 waiver.

15  
16 14. Upon information and believe, if Plaintiff incurred any injuries or damages as  
17 a result of Plaintiff's use of the ATTUNE® product, which Defendants deny, such injuries  
18 or damages were due to an alternative cause, without any negligence or culpable conduct by  
19 the Defendants. NOTE: Plaintiff objects to this asserted defense.

20  
21 15. To the extent Plaintiff's claims are based on alleged misrepresentations or  
22 omissions made to the FDA, such claims are barred pursuant to *Buckman Co. v. Plaintiff's*  
23 *Legal Comm.*, 531 U.S. 341 (2001).

24  
25 16. If the ATTUNE® product is unsafe in any way, it was unavoidably unsafe.  
26 Plaintiff's action is, therefore, barred by Comment K of §402A of the Restatement (Second)

1 of Torts and/or other applicable law. *See Hahn v. Richter*, 543 Pa. 558, 673 A.2d 888  
2 (1996).

3  
4 17. Plaintiff's injuries and damages, if any, were proximately caused by the  
5 negligence or fault of Plaintiff, or persons or parties whose identities are unknown at this  
6 time, and such comparative negligence or fault is sufficient to proportionately reduce or bar  
7 Plaintiff's recovery.

8  
9 18. Even if there was negligence on its part in the manufacture and sale of the  
10 ATTUNE® product, which Defendants expressly deny, such negligence was not the  
11 proximate or producing cause of the alleged injuries or damage.

12  
13 19. The injuries and damages claimed by Plaintiff, if any, were caused in whole  
14 or in part by the acts or omissions of persons or entities over whom Defendants have no  
15 control or right of control.

16  
17 20. Plaintiff's claims should be dismissed, reduced, offset, or barred in  
18 accordance with the principles of comparative negligence.

19  
20 21. Plaintiff's claims are barred in whole or in part under Sections 2, 4, 6(c), and  
21 6(d) of the Restatement (Third) of Torts: Product Liability.

22 **ADMITTED FACTS**

23 The following facts are admitted by the Parties:

24 1. On October 2, 2013, Plaintiff underwent a right total knee arthroplasty to  
25 treat his osteoarthritis. As part of the total knee arthroplasty procedure, his surgeon, Dr.  
26

1 William Barrett, implanted the ATTUNE® Knee System, which was designed,  
2 manufactured, and sold by the Defendants.

3 2. Plaintiff underwent a left total knee arthroplasty on August 13, 2014 to treat  
4 the osteoarthritis in his left knee. During this August 13, 2014 arthroplasty surgery, Plaintiff  
5 was implanted with the ATTUNE® Knee System in his left knee.  
6

7 3. On January 23, 2019, Plaintiff returned to Dr. Barrett's office complaining of  
8 left knee pain and was seen by Jana Flener, PA-C, who ordered x-ray imaging of Plaintiff's  
9 left knee.

10 4. Dr. Barrett recommended Plaintiff proceed with a revision surgery.

11 5. The pre-operative and post-operative diagnosis for Plaintiff's March 19, 2019  
12 revision surgery was "failed fixation of left total knee."  
13

14 6. On March 19, 2019, Plaintiff underwent a revision of his left knee wherein  
15 the ATTUNE® Knee System that was implanted in his left knee on August 13, 2014 was  
16 removed and replaced.

### 17 **ISSUES OF LAW**

18 The following are the issues of law to be determined by the court:

19 (a) Whether Defendants are liable to Plaintiff under the Washington Product  
20 Liability Act for Plaintiff's harm and damages resulting from the allegedly defective design  
21 of the tibial component of the ATTUNE® Knee System implanted in his left leg in 2014, as  
22 set forth in his Second Amended Complaint, proximately caused by the fact that the Attune  
23 Device was not reasonably safe as designed.  
24  
25  
26

1 (b) Whether Defendants are liable to Plaintiff under the Washington Product  
2 Liability Act for damages resulting from their alleged failure to warn Plaintiff's surgeon,  
3 Plaintiff<sup>2</sup>, and Valley Medical Center, the alleged purchaser of the ATTUNE® Knee  
4 Systems that were implanted in Plaintiff's knees, of the alleged risks associated with the  
5 ATTUNE® Knee System and, in particular, the tibial base thereof. Plaintiff's Second  
6 Amended Complaint alleges:  
7

8 135. The Defendants manufactured and sold the ATTUNE Device knowing the  
9 device would then be implanted in patients in need of a knee prostheses.

10 136. In the course of doing so, Defendants advertised, marketed and promoted the  
11 ATTUNE to consumers, including the medical community, the hospital, Plaintiff's  
12 implanting surgeon, and Plaintiff, and therefore had a duty to warn them of the risks  
13 associated with the use of the ATTUNE.  
14

15 140. The Defendants were under a duty to issue such warnings or instructions as a  
16 reasonably prudent manufacturer would issue in the same or similar circumstances  
17 but failed to do so.

18 Defendants object to Plaintiff's second proposed issue of law to the extent it includes Valley  
19 Medical Center, as Valley Medical Center is not a Defendant or party to this case, no claims  
20 or allegations were asserted by Plaintiff against Valley Medical Center, and the Court  
21

22  
23 <sup>2</sup> As of the date of filing this Pre-Trial Statement (September 12, 2023), Defendants' motion  
24 for summary judgment remains pending. One of the issues pending before the Court in  
25 Defendants' motion for summary judgment is the applicability of the learned intermediary  
26 doctrine. Under the learned intermediary doctrine, the Defendants' duty to warn extends  
only to the Plaintiff's physician. In filing this Pre-Trial Statement, Defendants do not waive  
and expressly reserve all arguments and defenses as to the applicability of the learned  
intermediary doctrine, which they intend to address further in pre-trial and trial briefings.

rejected this theory of liability as it pertains to Valley Medical Center at the hearing on Defendants' motion for summary judgment.

(c) Whether Plaintiff's claims are barred by the applicable statute of limitations.

Note: Plaintiff objects to this issue of law.

### **EXPERT WITNESSES**

(a) Each party shall be limited to the expert witnesses previously listed in their respective Rule 26(a)(2) disclosures.

(b) The name(s) and addresses of the expert witness(es) to be used by each party at the trial are, and the issue upon which each will testify is<sup>3</sup>:

(1) On behalf of Plaintiff:

<b>Witness</b>	<b>Status</b>	<b>General Nature of Expected Testimony</b>	<b>✓ if by Deposition</b>
Peter Bonutti, MD Bonutti Clinic 1303 W Evergreen Ave Suite 200 Effingham, Illinois 62401	Will testify.	Expert opinion previously provided and all matters relating thereto. Nature and cause of failure of Plaintiff's left knee Attune tibial base and defective design of Attune tibial base as set forth in Expert Report.	
Michael F. Arrigo 620 Newport Center Drive Suite 1100 Newport Beach, CA 92660	Will testify.	Expert opinion previously provided and all matters relating thereto. Usual, customary and reasonable charges for pain care and left knee revision surgery as set forth in Expert Report.	

<sup>3</sup> Defendants' Motion to Exclude the Report and Opinions of Plaintiff's Expert, Dr. Bonutti, remains pending. In filing this Pre-Trial Statement, Defendants do not waive and expressly reserve all arguments and objections to Plaintiff's introduction of the report and opinions of Dr. Bonutti at trial.



(2) On behalf of Defendants:

<b>Witness</b>	<b>Status</b>	<b>Nature of Expected Testimony</b>	<b>✓ if by Deposition</b>
Michael Ries, M.D., Sc.M. c/o Defendants	Will Testify.	Expert opinion previously provided and all matters relating thereto. The design, function, safety, and effectiveness of the ATTUNE® based on preclinical testing, registry data, and scientific literature. The risks associated with total knee arthroplasties.	
Chantal E. Holy, Ph.D., MSc. c/o Defendants	Will Testify.	Expert opinion previously provided and all matters relating thereto. Registry data and scientific literature setting forth the causes of and revision rates for total knee arthroplasties. Risks associated with total knee arthroplasties and prevalence in the scientific literature and registry data.	

### **OTHER WITNESSES**

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of Plaintiff:

<b>Witness</b>	<b>Status</b>	<b>General Nature of Expected Testimony</b>	<b>✓ if by Deposition</b>
Derrick C. Bosley 12046 69 <sup>th</sup> Ave S Seattle WA 98178	Will testify.	Left and right knee implant surgeries; failure of left knee implant; left knee revision surgery; post left knee implant surgery disability, pain, pain treatment, dependence on and addiction to pain medication, effects on wife and family, relationships with same, quality of life; treatment for	

		reduction of dependence on pain medication and withdrawal from same; lost of potential earning capacity; continuing and long terms effects of failure of left knee implant.	
Sandra Bosley 12046 69 <sup>th</sup> Ave S Seattle WA 98178	Will testify.	Left and right knee implant surgeries; failure of left knee implant; left knee revision surgery; post left knee implant surgery disability, pain, pain treatment, dependence on and addiction to pain medication, effects on wife and family, relationships with same, quality of life; treatment for reduction of dependence on pain medication and withdrawal from same; continuing and long terms effects of failure of left knee implant	
Liam Rowley c/o Defendants	Will testify by 30(b)(6) deposition testimony.	30(b)(6) deposition testimony; agreement with Dr. Bonutti's Expert Witness Report and article relating to omission of surface roughness and undercut cement pockets of predecessor Sigma in the subject tibial base; and all matters listed on Second Amended Attachment A to Third Amended Notice of Defendants' Deposition Pursuant to Fed. R. Civ. P. 30(B)(6) designated by Defendants to be addressed by this witness.	
Dr. Daniel Hoeffel, MD c/o Defendants	Will testify by 30(b)(6) deposition testimony.	30(b)(6) deposition testimony; agreement with Dr. Bonutti's Expert Witness Report and article relating to omission of surface roughness and	

		undercut cement pockets of predecessor Sigma in the subject tibial base; and all matters listed on Second Amended Attachment A to Third Amended Notice of Defendants' Deposition Pursuant To Fed. R. Civ. P. 30(B)(6) designated by Defendants to be addressed by this witness.	
Alexey Ryskin, MD Seattle Pain Relief 10564 5 <sup>th</sup> Avenue NE #304 Seattle, WA 98125	Possible witness only.	Plaintiff's pain, pain medication dependence and addiction, pain relief and pain medication reduction treatment.	
Navdeep Kaur, MD VIVAA 1301 4th Ave NW #302, Issaquah, WA 98027	Possible witness only.	Plaintiff's pain, pain medication dependence and addiction, pain relief and pain medication reduction treatment.	
Zachary Kile, PA-C or other representative Anesis Spine & Pain Care 801 SE 16th Street, Ste 121 Renton, WA 98057	Possible witness only.	Plaintiff's pain, pain medication dependence and addiction, pain relief and pain medication reduction treatment.	
William P. Barrett, MD Proliance Orthopedic Surgeons 4011 Talbot Road S., #300 Renton, WA 98055	Possible witness only.	Plaintiff's left knee examinations, surgeries and records; and disposal of Plaintiff's left knee implant; selected portions of deposition testimony; and Valley Medical Center's purchase from Defendants of Attune Knee System implanted in Plaintiff's left knee	
Jana Flener, PA c/o Counsel for Defendants	Possible witness only.	Plaintiff's left knee examinations, surgeries and records; including, but not limited to, Plaintiff's 1-29-	

		2015 and 1-23-2019 x-rays and 1-23-2019 x-ray findings	
Christian Campbell 4037 SE 11 <sup>th</sup> St., Renton, WA 98058 (Paralegal to Plaintiff's Counsel)	Will testify.	MAUDE reports research findings on loosening /debonding of subject tibial base, source and obtaining of Openpayments.cms.gov Listing of Payments to Dr. William P. Barrett, MD, 2015-2022 and FDA 510(k) K101433 and K170806 Applications and Summaries	
Representative of Valley Medical Center 400 S 43rd St Renton, WA 98055	Possible witness only.	Valley Medical Center's purchase from Defendants of Attune Knee System implanted in Plaintiff's left knee	

## (b) On behalf of Defendants:

<b>Witness</b>	<b>Status</b>	<b>Nature of Expected Testimony</b>	<b>✓ if by Deposition</b>
William P. Barrett, MD Proliance Orthopedic Surgeons 4011 Talbot Road S., #300 Renton, WA 98055	Will testify	Plaintiff's total knee arthroplasties and revision surgery. Plaintiff's comorbidities and risks for surgery. The ATTUNE® device.	
Jana Flener, P.A. c/o Defendants	Possible witness only	Plaintiff's total knee arthroplasties and revision surgery. Plaintiff's comorbidities and risks for surgery.	
Liam Rowley, M.S. c/o Defendants	Will Testify	30(b)(6) testimony.	
Daniel Hoeffel, M.D. c/o Defendants	Will Testify	30(b)(6) testimony.	

**EXHIBITS****(a) Plaintiff's Exhibits**

<b>Plaintiff's Exhibits</b>					
<b>Ex. #</b>	<b>Description</b>	<b>Authenticity</b>	<b>Admissibility</b>	<b>Objection</b>	<b>Admitted</b>
1	Plaintiff's Proliance Surgeon's Medical Records	Stipulated	Stipulated		
2	Plaintiff's Proliance Surgeon's Billing Records	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
3	Plaintiff's Valley Medical Center Medical Records	Stipulated	Stipulated		
4	Plaintiff's Valley Medical Center Billing Records	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
5	Plaintiff's VIVAA Medical Records	Stipulated	Stipulated		
6	Plaintiff's Anesis Spine & Pain Care Medical Records	Stipulated	Stipulated		
7	Plaintiff's Anesis Spine & Pain Care Billing Records	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
8	Plaintiff's Seattle Pain Relief Medical Records	Stipulated	Stipulated		
9	Plaintiff's Seattle Pain Relief Billing Records	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
10	Plaintiff's x-rays 10/9/2014	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation/excerpt); FRE 802	

11	Selected Medical Records	Disputed	Disputed	Duplicative of Exhibits No. 1, 3, 13, 16, 21, 22, 23, 24; Attorney Work Product (compilation, highlighting, notes); FRE 802
12	FDA 510(k) K101433 Summary (2010)	Disputed	Disputed	FRE 802; No Certification of Authenticity; Foundation; FRE 402; FRE 403
13	Implants Inventory 8/13/2014 left knee implant	Disputed	Disputed	Duplicative of Exhibit No. 3; Attorney Work Product (compilation/excerpt); FRE 802
14	DePuy Outcomes Tracking System Knee Device Log	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation/excerpt); FRE 802

15	Valley Medical Center - Surgical Implant Record	Disputed	Disputed	Duplicative of Exhibit No. 3; Attorney Work Product (compilation/excerpt); FRE 802	
16	Operative Report, William P. Barrett, MD 8/13/2014	Disputed	Disputed	Duplicative of Exhibits No. 1, 3; Attorney Work Product (compilation/excerpt); FRE 802	
17	Left Knee Pain Treatments after Implant	Disputed	Disputed	Duplicative of Exhibits No. 1, 5, 6; Attorney Work Product (compilation/excerpt); FRE 802	
18	Plaintiff's x-rays 1/29/2015	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation/excerpt); FRE 802	

19	Plaintiff's x-rays 1/23/2019	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation/ excerpt); FRE 802	
20	1/23/2019 Jana Flener PA-C X-ray Findings Note	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation) ; FRE 802	
21	3/12/2019 David Gifford PA-C Note	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation) ; FRE 802	
22	Operative Note, William P. Barrett, MD 3/25/2019 (for 3/19/2019), including but not limited to Preoperative and Postoperative Diagnoses	Disputed	Disputed	Duplicative of Exhibits No. 1, 3; Attorney Work Product (compilation/ excerpt, highlighting) ; FRE 802	
23	3/21/2019 Discharge Summary	Disputed	Disputed	Duplicative of Exhibit Nos. 1, 3; Attorney Work Product (compilation) ; FRE 802	



24	3/21/2019 Final Diagnoses	Disputed	Disputed	Duplicative of Exhibit Nos. 1, 3; Attorney Work Product (compilation, highlighting, notes); FRE 802	
25	Photograph Fig. 1 Bonutti et al J Knee Surg 2017	Disputed	Disputed	MIL; FRE 702/ <i>Daubert</i> ; FRE 402; FRE 403; FRE 802; Attorney Work Product	
26	Photographs Figs. 2,3,4 Bonutti et al J Knee Surg 2017	Disputed	Disputed	MIL; FRE 702/ <i>Daubert</i> ; FRE 402; FRE 403; FRE 802; Attorney Work Product	
27	Photographs Figs.1, 2,3,4 Bonutti J Knee Surg 2018	Disputed	Disputed	MIL; FRE 702/ <i>Daubert</i> ; FRE 402; FRE 403; FRE 802; Attorney Work Product	
28	Fig. 1 Arthroplasty Today 17 (2022)	Disputed	Disputed	MIL; FRE 702/ <i>Daubert</i> ; FRE 402; FRE 403; FRE 802; Attorney Work Product	

29	Fig. 2 Arthroplasty Today 17 (2022)	Disputed	Disputed	MIL; FRE 702/ <i>Daubert</i> ; FRE 402; FRE 403; FRE 802; Attorney Work Product	
30	FDA 510(k) K170806 Summary (2017)	Disputed	Disputed	MIL; FRE 802; No Certification of Authenticity; Foundation; FRE 402; FRE 403	
31	Dr. William P. Barrett Testimonial Video notes	Disputed	Disputed	MIL; FRE 802; Foundation; FRE 402; FRE 403	
32	Openpayments.cms.gov Listing of Payments to Dr. William P. Barrett, MD, 2015-2022	Disputed	Disputed	MIL; FRE 802; Foundation; FRE 402; FRE 403	
33	Defendants' Response to Interrogatory No. 3	Stipulated	Disputed	Duplicative of Exhibit No. 48; Attorney Work Product (excerpt/compilation)	
34	Attune Package Insert	Stipulated	Stipulated		
35	Deposition of William Barrett, M.D. Bosley v. DePuy Synthes Sales, Inc., et al. April 27, 2023	Stipulated	Disputed	FRE 802	

36	Peter M. Bonutti, MD, FACS Curriculum Vitae	Stipulated	Disputed	FRE 802; MIL	
37	30(b)(6) Deposition of Liam Rowley Bosley v. DePuy Synthes Sales, Inc., et al. May 23, 2023	Stipulated	Disputed	FRE 802	
38	Deposition of 30(b)(6) Daniel P. Hoeffel, M.D., Bosley v. DePuy Synthes Sales, Inc., et al. June 6, 2023	Stipulated	Disputed	FRE 802	
39	William P. Barrett, MD picture from Defendants' ATTUNE promotional video, Surgeon Design Team	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
40	Jana Flener, PA-C, 9-18-2013 Note	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation) ; FRE 802	
41	Jana Flener, PA-C, 1-9-2014 Note	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation) ; FRE 802	

42	Olivia Kenyon, PA-C, 7-24-2014 Note	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation); FRE 802	
43	Derrick Bosley BMI-Weight Chart, 8-17-2012 to 2-21-2019	Disputed	Disputed	Attorney Work Product (compilation); FRE 802	
44	William P. Barrett, MD, 10-30-2014, Note	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation); FRE 802	
45	William P. Barrett, MD, 1-29-2015, Note	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation); FRE 802	
46	DePuy Defendants' Responses to Plaintiff's Requests for Admission	Stipulated	Disputed	Foundation; FRE 402; FRE 403	
47	William P. Barrett Testimonial Video	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
48	Defendants' Response to Plaintiff's First Interrogatories	Stipulated	Disputed	Foundation; FRE 402; FRE 403	

49	Derrick C. Bosley, Sr., Hospital Services Account Detail, 8-13-2014 to 8-15-2014	Disputed	Disputed	Duplicative of Exhibit No. 4; Attorney Work Product (compilation) ; FRE 802	
50	NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING – Anesis Spine and Pain Care F.R.E. 902(11)	Stipulated	Disputed	Substance of proposed exhibit is duplicative of Exhibits No. 6 and 7; FRE 402; FRE 403; Attorney Work Product	
51	NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING – Proliance Surgeons F.R.E. 902(11)	Stipulated	Disputed	Substance of proposed exhibit is duplicative of Exhibits No. 1 and 2; FRE 402; FRE 403; Attorney Work Product	
52	NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING – Seattle Pain Relief F.R.E. 902(11) (to be provided upon transmission of records to Defendants)	Stipulated	Disputed	Substance of proposed exhibit is duplicative of Exhibits No. 8 and 9; FRE 402; FRE 403; Attorney Work Product	

53	NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING – VIVAA PLLC F.R.E. 902(11)	Stipulated	Disputed	Substance of proposed exhibit is duplicative of Exhibit No. 5; FRE 402; FRE 403; Attorney Work Product	
54	NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING – Valley Medical Center F.R.E. 902(11) (to be provided upon transmission of records to Defendants)	Stipulated	Disputed	Substance of proposed exhibit is duplicative of Exhibits No. 3 and 4; FRE 402; FRE 403; Attorney Work Product	
55	Seract Payments Received	Disputed	Disputed	MIL; FRE 402; FRE 403	
56	Columbia Physical Therapy Ledger 2018	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
57	Expert Witness Report of Peter Bonutti, MD	Stipulated	Disputed	MIL; FRE 702/ <i>Daubert</i> ; FRE 402; FRE 403; FRE 802; Attorney Work Product	
58	Expert Witness Report of Michael Arrigo	Stipulated	Disputed	MIL; FRE 402; FRE 403; FRE 802; Attorney Work Product	

1	Without waiving				
2	Plaintiff's objections				
3	to Defendants'				
4	proposed exhibits				
5	which Defendants				
6	did not list in their				
7	Amended Pretrial				
8	Statement in				
9	accordance with				
10	LCR 16(i) but have				
11	listed in this				
12	proposed Pretrial				
13	Order, Plaintiff lists,				
14	as Learned Treatises,				
15	Periodicals, or				
16	Pamphlets the				
17	following articles	Disputed	Disputed	FRE 802;	
18	cited in the Expert			Foundation;	
19	Witness Report of			MIL; FRE	
20	Peter Bonutti, MD,			402; FRE	
21	on which Dr.			403	
22	Bonutti may rely or				
23	to which he may				
24	refer in his				
25	testimony at trial				
26	pursuant to FRE				
	Rule 803(18), which				
	Expert Witness				
	Report is listed in				
	Plaintiff's Pretrial				
	Statement and this				
	exhibit list:				
	<a href="https://onlinelibrary.wiley.com/doi/pdf/10.1111/ans.16046">https://onlinelibrary.wiley.com/doi/pdf/10.1111/ans.16046</a> ;	Disputed	Disputed	FRE 802;	
				Foundation;	
				MIL; FRE	
				402; FRE	
				403	
	<a href="https://read.qxmd.com/keyword/173027">https://read.qxmd.com/keyword/173027</a>	Disputed	Disputed	FRE 802;	
				Foundation;	
				MIL; FRE	
				402; FRE	
				403	

<a href="https://www.drugwatch.com/knee-replacement/depu-attune/">https://www.drugwatch.com/knee-replacement/depu-attune/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
<a href="https://www.cureus.com/articles/66018-early-aseptic-failure-of-the-tibial-component-cement-interface-in-attune-total-knee-arthroplasty-a-report-of-three-cases">https://www.cureus.com/articles/66018-early-aseptic-failure-of-the-tibial-component-cement-interface-in-attune-total-knee-arthroplasty-a-report-of-three-cases</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
<a href="https://online.boneandjoint.org.uk/doi/abs/10.1302/1358-992X.2020.9.067;">https://online.boneandjoint.org.uk/doi/abs/10.1302/1358-992X.2020.9.067;</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
<a href="https://www.arthroplastyjournal.org/article/S0883-5403(20)30827-5/pdf">https://www.arthroplastyjournal.org/article/S0883-5403(20)30827-5/pdf</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
<a href="https://pdfs.semanticscholar.org/b088/f2909e1d352b8680e2ab28f2afe5fd2e461d.pdf?_ga=2.39694947.1934483757.1675538345-981525284.1675538345">https://pdfs.semanticscholar.org/b088/f2909e1d352b8680e2ab28f2afe5fd2e461d.pdf?_ga=2.39694947.1934483757.1675538345-981525284.1675538345</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
<a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9508148/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9508148/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
<a href="https://www.arthroplastyjournal.org/article/S0883-5403(17)30737-4/fulltext">https://www.arthroplastyjournal.org/article/S0883-5403(17)30737-4/fulltext</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	



<a href="https://pubmed.ncbi.nlm.nih.gov/36209439/">https://pubmed.ncbi.nlm.nih.gov/36209439/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
<a href="https://pubmed.ncbi.nlm.nih.gov/29896562/">https://pubmed.ncbi.nlm.nih.gov/29896562/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
<a href="https://www.mattioli1885journals.com/index.php/actabiomedica/article/download/8997/8361/40668">https://www.mattioli1885journals.com/index.php/actabiomedica/article/download/8997/8361/40668</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
<a href="https://scholarlypublications.universiteitliden.nl/access/item%3A3483966/download">https://scholarlypublications.universiteitliden.nl/access/item%3A3483966/download</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
<a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5994597/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5994597/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
<a href="https://www.arthraplastyjournal.org/article/S0883-5403(20)31163-3/fulltext">https://www.arthraplastyjournal.org/article/S0883-5403(20)31163-3/fulltext</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403

Without waiving Plaintiff's objections to Defendants' proposed exhibits which Defendants did not list in their Amended Pretrial Statement in accordance with LCR 16(i) but have	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
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1	listed in this				
2	proposed Pretrial				
3	Order, Plaintiff lists,				
4	as Learned Treatises,				
5	Periodicals, or				
6	Pamphlets the				
7	following articles not				
8	cited in the Expert				
9	Witness Report of				
10	Peter Bonutti, MD,				
11	but on which Dr.				
12	Bonutti may rely or				
13	to which he may				
14	refer in his testimony				
15	pursuant to FRE Rule				
16	803(18) at trial:				
17					
18	<a href="https://pubmed.ncbi.nlm.nih.gov/28591930/">https://pubmed.ncbi.nlm.nih.gov/28591930/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
19	<a href="https://www.cureus.com/articles/66018-early-aseptic-failure-of-the-tibial-component-cement-interface-in-attune-total-knee-arthroplasty-a-report-of-three-cases#!/">https://www.cureus.com/articles/66018-early-aseptic-failure-of-the-tibial-component-cement-interface-in-attune-total-knee-arthroplasty-a-report-of-three-cases#!/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
20	<a href="https://www.injmedtech.com/en-US/product/attune-s-technology">https://www.injmedtech.com/en-US/product/attune-s-technology</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
21	<a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6446526/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6446526/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
22					
23					
24					
25					
26					

<a href="https://patents.google.com/patent/US9498342B2/en?q=9498342">https://patents.google.com/patent/US9498342B2/en?q=9498342</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
<a href="https://www.mddionline.com/news/how-510k-submission-can-affect-your-patent">https://www.mddionline.com/news/how-510k-submission-can-affect-your-patent</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
<a href="https://pubmed.ncbi.nlm.nih.gov/22425300/">https://pubmed.ncbi.nlm.nih.gov/22425300/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
<a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8776517/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8776517/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
<a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9508148/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9508148/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
<a href="https://www.arthroplastyjournal.org/article/S0883-5403(21)00168-6/fulltext">https://www.arthroplastyjournal.org/article/S0883-5403(21)00168-6/fulltext</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
<a href="https://www.vumedi.com/video/is-cement-past-its-time-uncemented-total-knee-its-time-has-come-again-seriously/">https://www.vumedi.com/video/is-cement-past-its-time-uncemented-total-knee-its-time-has-come-again-seriously/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
<a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9633442/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9633442/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE

				403	
	<a href="https://www.researchgate.net/figure/Attune-left-and-Attune-Right-tibia-components-with-additional-cement-pockets_fig1_359868315">https://www.researchgate.net/figure/Attune-left-and-Attune-Right-tibia-components-with-additional-cement-pockets_fig1_359868315</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
	<a href="https://pubmed.ncbi.nlm.nih.gov/22425300/">https://pubmed.ncbi.nlm.nih.gov/22425300/</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
	<a href="https://www.mddionline.com/news/how-510k-submission-can-affect-your-patent">https://www.mddionline.com/news/how-510k-submission-can-affect-your-patent</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
	<a href="https://patents.google.com/patent/US9498342B2/en?q=9498342">https://patents.google.com/patent/US9498342B2/en?q=9498342</a>	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	

## (b) Defendants' Exhibits

Defendants' Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
101	Expert Report of Michael Ries, M.D., Sc.M.	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
102	Curriculum Vitae of Michael Ries, M.D., Sc.M.	Stipulated	Disputed	Duplicative; Not Listed in Amended Pretrial Statement (hereinafter "NLAPS")	

103	Expert Report of Chantal E. Holy, Ph.D., MSc.	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
104	Curriculum Vitae of Chantal E. Holy, Ph.D., MSc.	Stipulated	Disputed	Duplicative; Not listed in NLAPS	
105	Plaintiff's Initial and Supplemental Responses to DePuy Defendants Requests for Production	Stipulated	Disputed	FRE 402; FRE 403	
106	Plaintiff's Initial and Supplemental Responses to DePuy Defendants Interrogatories	Stipulated	Disputed	FRE 402; FRE 403	
107	Anesis Spine & Pain Care Records (BosleyRecords001262-001388; BosleyProduction000036-000254; BosleyProduction001636-001777; BosleyNOIProduction000747-000888)	Stipulated	Stipulated		
108	Columbia Physical Therapy Services Records (BosleyProduction001778-001855)	Stipulated	Stipulated		
109	Dr. Azar Sadeghalvad Records (BosleyProduction002013-002021)	Stipulated	Stipulated		
110	Kaiser Permanent Approval for Revision Surgery (BosleyProduction000334-335)	Stipulated	Stipulated	NLAPS	

111	Paul Brown, M.D. Records (BosleyProduction0 01856-1890)	Stipulated	Stipulated		
112	Proliance Surgeon's Records (BosleyRecords0011 39-001261; BosleyProduction 001891-002012; BosleyNOIProduction n000130-000251)	Stipulated	Stipulated		
113	Richard Ludwig, M.D. Medical Records (BosleyProduction0 04051; BosleyProduction00 4492-004496)	Stipulated	Stipulated		
114	Seattle Hand Surgery Group Records (BosleyProduction0 02022-002040)	Stipulated	Stipulated		
115	Seattle Pain Relief Records (BosleyProduction0 02041-002140)	Stipulated	Stipulated		
116	Swedish Medical Center Records (BosleyRecords0013 85-001388)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
117	Valley Medical Center Records (BosleyProduction0 02141-003291; BosleyRecords0000 01-001138; BosleyRecords0015 87-002001)	Stipulated	Stipulated		

118	VIVAA Records (BosleyProduction0 03494-004050; BosleyNOIProduction000258-000746)	Stipulated	Stipulated		
119	2006 Misc. Pharmacy Records (BosleyProduction0 04231-004238)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
120	2009 Misc. Pharmacy Records (BosleyProduction0 04208-004210)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
121	2013 Misc. Pharmacy Records (BosleyProduction0 04162-004163; BosleyProduction00 4166-004195)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
122	Appris Health Pharmacy Records (BosleyProduction0 04159-004161)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
123	EnterpriseRx Pharmacy Records (BosleyProduction0 00338-000339)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
124	Fred Meyer EasyFill Pharmacy Records (BosleyProduction0 00336-000337; BosleyProduction00 0340-000362; BosleyProduction00 4142-004158)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
125	Plaintiff's Prescription Records (BosleyProduction0 04055-4253)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	

126	Rite Aid Pharmacy Records (BosleyProduction004078-004094; BosleyProduction004104-004126; BosleyProduction004201-004207)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
127	Walgreens Pharmacy Records (BosleyProduction000255; BosleyProduction000257-000275; BosleyProduction0004055-4077; BosleyProduction004196-004200)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
128	Bosley v. C.I. Earll Co., Case Records (BosleyvEarll000001-000049)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
129	Chapter 13 Bankruptcy Records (BosleyChapter13Production000001-000291)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
130	Purdue Pharma LP, Personal Injury Claimant Proof of Claim Form for Derrick Bosley (BosleyProduction000001-000016)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
131	Sandra Bosley Purdue Pharma Claim (SandraBosleyPurduePharmaClaim000001-000020)	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
132	"Timeline of My Surgeries" (BosleyProduction000256)	Stipulated	Disputed	NLAPS	



133	Plaintiff's Tax Returns 2009-2021(BosleyProduction004292-4356)	Stipulated	Stipulated		
134	Correspondence between Plaintiff's Counsel and Experts (BosleyProduction004357-004491)	Stipulated	Disputed	NLAPS; Attorney Work Product; FRE 401; FRE 402	
135	All records and documents produced by Plaintiff in response to DePuy Defendants' Requests for Production (BosleyProduction000001-004496; BosleyNOIProduction000001-000888; BosleyChapter13Production000001-000291; SandraBosleyPurduePharmaClaim000001-20; Bosley v Oaks000001-000006; Bosley v Earl000001-000049; Bosley3rdSuppProduction000001-000021; Chapter13Dockets000001-000009; SnohomishClerkPapers000001-19)	Stipulated	Disputed	Duplicative; FRE 401; FRE 402	
136	DePuy Complaint File (DBOSLEY_000000001-DBOSLEY_00006587)	Disputed	Disputed	NLAPS; FRE 401; FRE 402; FRE 403; FRE 802	

137	DePuy DHRs (DBOSLEY_000065 88- DBOSLEY_000067 19)	Disputed	Disputed	NLAPS; FRE 401; FRE 402; FRE 403; FRE 802	
138	Defendants' April 21, 2023 Production (DEPATT_0000000 01- DEPATT_00760251 )	Stipulated	Disputed	NLAPS	
139	ATTUNE® Package Insert	Stipulated	Stipulated		
140	ATTUNE® Surgical Technique Brochure	Stipulated	Disputed	NLAPS	
141	ATTUNE® Instructions for Use (DEPATT_0140104 - DEPATT_00140199 )	Stipulated	Disputed	NLAPS	
142	American Joint Replacement Registry: 2022 Annual Report	Disputed	Disputed	NLAPS	
143	Australian Orthopaedic Association National Joint Replacement Registry: Hip, Knee & Shoulder Arthroplasty: 2022 Annual Report	Disputed	Disputed	NLAPS	
144	The New Zealand Joint Registry - Twenty-Three Year Report - January 1999 to December 2021	Disputed	Disputed	NLAPS	
145	National Joint Registry 19th Annual Report. 2022	Disputed	Disputed	NLAPS	

146	Wyles CC, Tibbo ME, Yuan BJ, Trousdale RT, Berry DJ, Abdel MP. Long-Term Results of Total Knee Arthroplasty with Contemporary Distal Femoral Replacement. The Journal of bone and joint surgery American volume. 2019.	Stipulated	Disputed	FRE 803(18); NLAPS	
147	Schroer WC, Berend KR, Lombardi AV, Barnes CL, Bolognesi MP, Berend ME, et al. Why are total knees failing today? Etiology of total knee revision in 2010 and 2011. J Arthroplasty. 2013;28(8 Suppl):116-9.	Stipulated	Disputed	FRE 803(18); NLAPS	
148	DerSimonian R, Laird N. Meta-analysis in clinical trials. Control Clin Trials. 1986;7(3):177-88.	Stipulated	Disputed	FRE 803(18); NLAPS	
149	Higgins JP, Thompson SG. Quantifying heterogeneity in a meta-analysis. Statistics in medicine. 2002;21(11):1539-58.	Stipulated	Disputed	FRE 803(18); NLAPS	

150	Higgins JP, Thompson SG, Deeks JJ, Altman DG. Measuring inconsistency in meta-analyses. BMJ. 2003;327(7414):557-60.	Stipulated	Disputed	FRE 803(18); NLAPS	
151	IntHout J, Ioannidis JPA, Borm GF. The Hartung-Knapp-Sidik-Jonkman method for random effects meta-analysis is straightforward and considerably outperforms the standard DerSimonian-Laird method. BMC Med Res Methodol. 2014;14.	Stipulated	Disputed	FRE 803(18); NLAPS	
152	Vasarhelyi EM, Petis SM. Use of National Joint Registries to Evaluate a New Knee Arthroplasty Design. J Arthroplasty. 2020;35(2):413-6.	Stipulated	Disputed	FRE 803(18); NLAPS	

153	Lewis PL, Graves SE, de Steiger RN, Campbell DG, Peng Y, Hatton A, et al. Does Knee Prosthesis Survivorship Improve When Implant Designs Change? Findings from the Australian Orthopaedic Association National Joint Replacement Registry. Clin Orthop Relat Res. 2020;478(6):1156-72.	Stipulated	Disputed	FRE 803(18); NLAPS	
154	Abdel MP, Ledford CK, Kobic A, Taunton MJ, Hanssen AD. Contemporary failure aetiologies of the primary, posterior-stabilised total knee arthroplasty. Bone Joint J. 2017;99-B(5):647-52.	Stipulated	Disputed	FRE 803(18); NLAPS	
155	Sharkey PF, Lichstein PM, Shen C, Tokarski AT, Parvizi J. Why are total knee arthroplasties failing today--has anything changed after 10 years? J Arthroplasty. 2014;29(9):1774-8.	Stipulated	Disputed	FRE 803(18); NLAPS	

156	Cherian JJ, Jauregui JJ, Banerjee S, Pierce T, Mont MA. What Host Factors Affect Aseptic Loosening After THA and TKA? Clinical orthopaedics and related research. 2015;473(8):2700-9.	Stipulated	Disputed	FRE 803(18); NLAPS	
157	Ryu KJ. CORR Insights(R): What Host Factors Affect Aseptic Loosening After THA and TKA? Clinical orthopaedics and related research. 2015;473(8):2710-1.	Stipulated	Disputed	FRE 803(18); NLAPS	
158	Inacio MC, Cafri G, Paxton EW, Kurtz SM, Namba RS. Alternative bearings in total knee arthroplasty: risk of early revision compared to traditional bearings: an analysis of 62,177 primary cases. Acta orthopaedica. 2013;84(2):145-52.	Stipulated	Disputed	FRE 803(18); NLAPS	
159	Namba RS, Cafri G, Khatod M, Inacio MC, Brox TW, Paxton EW. Risk factors for total knee arthroplasty aseptic revision. The Journal of arthroplasty. 2013;28(8 Suppl):122-7.	Stipulated	Disputed	FRE 803(18); NLAPS	

160	van Otten TJM, van Loon CJM. Early aseptic loosening of the tibial component at the cement-implant interface in total knee arthroplasty: a narrative overview of potentially associated factors. Acta Orthop Belg. 2022;88(1):103-11.	Stipulated	Disputed	FRE 803(18); NLAPS	
161	Torino D, Damsgaard C, Kolessar DJ, Hayes DS, Foster B, Constantino J, et al. Tibial Baseplate-Cement Interface Debonding in the ATTUNE Total Knee Arthroplasty System. Arthroplast Today. 2022;17:165-71.	Stipulated	Disputed	FRE 803(18); NLAPS	
162	Coles T, Williams V, Dwyer K, Mordin M. Psychometric Evaluation of the Patient's Knee Implant Performance Questionnaire. Value Health. 2018;21(11):1305-12.	Stipulated	Disputed	FRE 803(18); NLAPS	

163	Coles TM, Dwyer KA, Mordin M, Williams V, Clatworthy M, Yates P, et al. Psychometric Evaluation Of The Patient's Knee Implant Performance (PKIP) Questionnaire For The Assessment Of Primary Total Knee Arthroplasty. Value Health. 2014;17(7):A568.	Stipulated	Disputed	FRE 803(18); NLAPS	
164	Lewis S, Price M, Dwyer KA, O'Brien S, Heekin RD, Yates PJ, et al. Development of a scale to assess performance following primary total knee arthroplasty. Value Health. 2014;17(4):350-9.	Stipulated	Disputed	FRE 803(18); NLAPS	
165	Willburger RE, Oberberg S. Early and mid-term results with the ATTUNE total knee replacement system compared to PFC Sigma: a prospective comparative study. J Orthop Surg Res. 2022;17(1):509.	Stipulated	Disputed	FRE 803(18); NLAPS	



166	Vanitcharoenkul E, Unnanuntana A. Midterm functional recovery of Total knee arthroplasty patients compared between the ATTUNE knee system and the press fit condylar (PFC) SIGMA knee system. BMC Musculoskelet Disord. 2021;22(1):620.	Stipulated	Disputed	FRE 803(18); NLAPS	
167	Ranawat CS, White PB, West S, Ranawat AS. Clinical and Radiographic Results of Attune and PFC Sigma Knee Designs at 2- Year Follow-Up: A Prospective Matched-Pair Analysis. J Arthroplasty. 2017;32(2):431-6.	Stipulated	Disputed	FRE 803(18); NLAPS	
168	Martin JR, Jennings JM, Watters TS, Levy DL, McNabb DC, Dennis DA. Femoral Implant Design Modification Decreases the Incidence of Patellar Crepitus in Total Knee Arthroplasty. J Arthroplasty. 2017;32(4):1310-3.	Stipulated	Disputed	FRE 803(18); NLAPS	

169	Bonutti PM, Khlopas A, Chughtai M, Cole C, Gwam CU, Harwin SF, et al. Unusually High Rate of Early Failure of Tibial Component in ATTUNE Total Knee Arthroplasty System at Implant-Cement Interface. J Knee Surg. 2017;30(5):435-9.	Stipulated	Disputed	FRE 803(18); NLAPS	
170	Sandberg JM, Gray I, Pearlman A, Terlecki RP. An evaluation of the Manufacturer And User Facility Device Experience database that inspired the United States Food and Drug Administration's Reclassification of transvaginal mesh. Investig Clin Urol. 2018;59(2):126-32.	Stipulated	Disputed	FRE 803(18); NLAPS	
171	Giaretta S, Berti M, Micheloni GM, Ceccato A, Marangoni F, Momoli A. Early experience with the ATTUNE Total Knee Replacement System. Acta Biomed. 2019;90(12-s):98-103.	Stipulated	Disputed	FRE 803(18); NLAPS	

172	Kaptein BL, den Hollander P, Thomassen B, Fiocco M, Nelissen R. A randomized controlled trial comparing tibial migration of the ATTUNE cemented cruciate-retaining knee prosthesis with the PFC-sigma design. Bone Joint J. 2020;102-b(9):1158-66.	Stipulated	Disputed	FRE 803(18); NLAPS	
173	Murphy JD, Braunlich PR, Judson Iv WR, Harker JN, Baumann PA. Early Aseptic Failure of the Tibial Component-Cement Interface in ATTUNE® Total Knee Arthroplasty: A Report of Three Cases. Cureus. 2021;13(12):e20582.	Stipulated	Disputed	FRE 803(18); NLAPS	

174	Total knee arthroplasty in the outpatient vs inpatient settings: impact of site of care on early postoperative economic and clinical outcomes. Mantel J, Ruppenkamp JW, Cantu M, Holy CE. J Orthop Surg Res. 2023 Apr 4;18(1):273. doi: 10.1186/s13018-023-03750-4.	Stipulated	Disputed	FRE 803(18); NLAPS	
175	Outcomes of surgical versus nonsurgical treatment for multiple rib fractures: A US hospital matched cohort database analysis. Shiroff AM, Wolf S, Wu A, Vanderkarr M, Anandan M, Ruppenkamp JW, Galvain T, Holy CE. J Trauma Acute Care Surg. 2023 Apr 1;94(4):538-545. doi: 10.1097/TA.0000000000003828. Epub 2022 Nov 15.	Stipulated	Disputed	FRE 803(18); NLAPS	

176	Longitudinal Rates, Patient Risk Factors, and Economic Impact of Superficial and Deep Incisional Surgical Site Infection After Primary and Revision Total Hip Arthroplasty: A U.S. Retrospective Commercial Claims Database Analysis. Edmiston CE Jr, Spencer M, Gunja NJ, Holy CE, Ruppenkamp JW, Leaper DJ. Surg Infect (Larchmt). 2023 Mar 20. doi: 10.1089/sur.2022.37 6. Online ahead of print.	Stipulated	Disputed	FRE 803(18); NLAPS	
177	Real-world 2-year clinical and economic outcomes among patients receiving a medial collared, triple tapered primary hip system versus other implants for total hip arthroplasty. Diaz R, Mantel J, Ruppenkamp J, Cantu M, Holy CE. Curr Med Res Opin. 2023 Mar 3:1-9. doi: 10.1080/03007995.2 023.2181150.	Stipulated	Disputed	FRE 803(18); NLAPS	

178	Resource utilization and costs for robotic-assisted and manual total knee arthroplasty - a premier healthcare database study. Alton TB, Chitnis AS, Goldstein L, Rajappan SK, Gupta A, Michnacs K, Holy CE, Hoeffel DP. Expert Rev Med Devices. 2023 Mar 2:1-9. doi: 10.1080/17434440.2023.2185135.	Stipulated	Disputed	FRE 803(18); NLAPS	
179	Longitudinal rates, risk factors, and costs of superficial and deep incisional surgical-site infection (SSI) after primary and revision total knee arthroplasty: A US retrospective claims database analysis. Edmiston CE Jr, Spencer M, Gunja NJ, Holy CE, Ruppenkamp JW, Leaper DJ. Infect Control Hosp Epidemiol. 2023 Feb 2:1-9. doi: 10.1017/ice.2023.10.	Stipulated	Disputed	FRE 803(18); NLAPS	

180	<p>Risk and economic burden of surgical site infection following spinal fusion in adults. Edmiston CE Jr, Leaper DJ, Chitnis AS, Holy CE, Chen BP. Infect Control Hosp Epidemiol. 2023 Jan;44(1):88-95. doi: 10.1017/ice.2022.32. Epub 2022 Mar 24.</p>	Stipulated	Disputed	FRE 401; FRE 803(18); NLAPS	
181	<p>Incidence, costs and post-operative complications following ankle fracture - A US claims database analysis. Vanderkarr MF, Ruppenkamp JW, Vanderkarr M, Parikh A, Holy CE, Putnam M. Page 2 of 7 BMC Musculoskelet Disord. 2022 Dec 26;23(1):1129. doi: 10.1186/s12891-022-06095-x.</p>	Stipulated	Disputed	FRE 803(18); NLAPS	

1		Cost-Effectiveness				
2		of Cement				
3		Augmentation				
4		Versus No				
5		Augmentation for				
6		the Fixation of				
7		Unstable				
8		Trochanteric				
9		Fractures.				
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6		Colorectal Surgery				
7		Using a US				
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9		Database: Is There a				
10		Role for Innovative				
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231	NJR Implant Bespoke Report for Attune (PS RP) dated March 11, 2020	Stipulated	Disputed	FRE 803(18); NLAPS	
232	NJR Implant Bespoke Report for Attune (PS FB) dated March 11, 2020	Stipulated	Disputed	FRE 803(18); NLAPS	
233	NJR Implant Bespoke Report for Attune (CR FB) dated March 11, 2020	Stipulated	Disputed	FRE 803(18); NLAPS	

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236	ERPD Data Summary for Attune Tibia dated December 5, 2019	Stipulated	Disputed	FRE 803(18); NLAPS	
237	Data from New Zealand Joint Registry	Stipulated	Disputed	FRE 803(18); NLAPS	
238	Data from Geneva Registry	Disputed	Disputed	FRE 803(18); NLAPS	
239	Data from Dutch Registry	Disputed	Disputed	FRE 803(18); NLAPS	
240	AOANJRR Report re: Attune dated June 13, 2019	Stipulated	Disputed	FRE 803(18); NLAPS	
241	MARCQI Report – Summary and Review of DePuy Synthes Products and Class Trends dated January 2019	Stipulated	Disputed	FRE 803(18); NLAPS	
242	DePuy Attune Clinical Evidence Website – <a href="https://www.jnjmedtech.com/en-US/product/attune-knee-system/attune-evidence">https://www.jnjmedtech.com/en-US/product/attune-knee-system/attune-evidence</a>	Stipulated	Disputed	FRE 803(18); NLAPS	

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302	DePuy Attune Clinical Evidence Website – <a href="https://www.jnjmedtech.com/en-US/product/attune-knee-system/attune-evidence">https://www.jnjmedtech.com/en-US/product/attune-knee-system/attune-evidence</a>	Stipulated	Disputed	FRE 803(18); NLAPS	
303	UK Registry Data (2016-2022)	Disputed	Disputed	FRE 803(18); NLAPS	
304	Australian Registry Data (2016-2022)	Disputed	Disputed	FRE 803(18); NLAPS	

**ACTION BY THE COURT**

(a) This case is scheduled for trial before a jury on October 10, 2023, at 9 a.m.

(b) Trial briefs shall be submitted to the court on or before September 26, 2023.

(c) Jury Instructions requested by either party shall be submitted to the Court on or before September 26, 2023. Suggested questions of either party to be asked of the jury by the Court on voir dire shall be submitted to the Court on or before September 26, 2023.

(d) This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 3rd day of October, 2023.



MICHELLE L. PETERSON  
United States Magistrate Judge

FORM APPROVED

s/James J. Purcell

Attorney for Plaintiff

s/Erin M. Pauley

Attorney for Defendants